

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-051861

01/07/2011

HONORABLE ROBERT BUDOFF

CLERK OF THE COURT
L. Carlson
Deputy

AMERICAN NATIONAL BANK

FREDERICK E DAVIDSON

v.

JOHN NICHOLAS VATISTAS, et al.

COLIN F CAMPBELL

JEFFREY B MESSING
DENNIS I WILENCHIK
KEVIN T AHERN

MINUTE ENTRY

8:28 a.m. This is the time set for Status Conference scheduled by the Court by minute entry of September 16, 2010.

A record of the proceeding is made by audio and/or videotape in lieu of a court reporter.

Counsel, Frederick Davidson, is present for Plaintiff. Counsel, Dennis Wilenchik, is present with Defendant John Vatisas. Counsel, Jeffrey Messing, is present for Defendants Madia.

Since the September 16, 2010, minute entry was issued, the following significant event occurred: Plaintiff's First Amended Complaint was filed, with the Court's permission, on September 20, 2010. On November 9, 2010, Defendants Madia (the subject of Count Five of the First Amended Complaint) filed a Motion to Dismiss. Plaintiff's Response to the Motion to Dismiss was filed November 29, 2010. Defendant's Reply was filed December 13, 2010.

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On December 22, 2010, by minute entry, the Court granted Madia's Motion to Dismiss.

On December 30, 2010, Plaintiff filed an Emergency Motion for Leave to Amend First Amended Complaint. Defendant Madia filed a Response/Objection on January 3, 2011, and Defendant Vatistas filed a Response/Objection on January 4, 2011. A Combined Reply was filed by Plaintiff on January 6, 2011.

Argument is presented on Plaintiff's Motion for Leave to Amend First Amended Complaint.

The Court does not consider Plaintiff's Emergency Motion for Leave to Amend First Amended Complaint as a Motion for Reconsideration of this Court's ruling of December 22, 2010. On the record, Plaintiff's counsel has agreed that the Court's ruling of December 22, 2010, applying a statute of limitations to the facts as alleged in the First Amended Complaint of September 20, 2010, was correct. The Motion before the Court is, therefore, simply a Motion for Leave to Amend First Amended Complaint to allege additional facts and counts against Madia which would make the Court's ruling as to the applicability of the two-year statute of limitations that applies to negligent misrepresentations not applicable in the new context.

The Court has considered the implications of granting or not granting Plaintiff's Motion. The Court understands that if the Motion is not granted, a separate proceeding would, in all probability, be filed against Madia which would then probably result in a Motion for Consolidation. If the Court grants the Motion to Amend, new allegations would be presented against Madia which would then need to be addressed by Madia and Vatistas, potentially, in the existing proceeding.

The Court is cognizant of the provisions of Rule 15(a) of the Rules of Civil Procedure, and existing case law that suggests that Motions to Amend should be freely given. However, in determining Motions to Amend pleadings, especially those that add parties, this Court finds it important to consider the impact of the addition of new parties to the litigation on those parties who have, to date, been actively involved to a great extent in the existing litigation.

Having considered those matters, both as described by counsel in their arguments, in their written pleadings, and the factors cited by the Court herein, Plaintiff's Motion for Leave to Amend First Amended Complaint is denied.

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If a separate Complaint is filed against Madia, and a Motion to Consolidate the matters is filed, the Court will consider that issue when raised. Based upon the Court's knowledge of the facts of this case, consolidation of the two matters would not necessarily be a "given". Madia has not been involved in discovery proceedings to date. Madia would need to, thorough counsel, conduct its own extensive discovery, and it is likely that the conduct of that additional discovery would unnecessarily delay proceedings as they apply to Vatisas. Such a delay would not be in the interest of justice to Vatisas, or to the bank's claims against Vatisas.

The Court is also aware of the possibility of duplication of discovery, and the possibility that some discovery that has already occurred may need to be redone if a new Complaint is filed, but that new discovery expense would be incurred whether or not the Motion to Amend was granted or a new Complaint is filed.

Discovery Master Issues:

Kevin Ahern was previously appointed as Discovery Master in this case with the intent that he would resolve, to the extent possible, discovery issues that exist between the parties, both those presented in pleading form or by letter request to him.

New Disclosure/Discovery Deadlines:

The Court understands that Mr. Ahern may have delayed in resolving some of these issues while awaiting the Court's decision on Motions for Summary Judgment, and possibly, this Motion to Dismiss. There are no pending Motions for Summary Judgment before the Court, and the Motion to Dismiss has been resolved. The Court, therefore, requests that Mr. Ahern, with reasonable dispatch, resolve those discovery issues pending before him.

IT IS ORDERED entering the following amended schedule for disclosure and discovery:

1. All Responses to currently outstanding discovery requests shall be provided to the requesting party by: February 4, 2011.
2. Plaintiff's final expert disclosures shall be served by: February 28, 2011.

Defendant's final expert disclosures shall be exchanged by: March 15, 2011.

Rebuttal expert disclosures shall be exchanged by: March 31, 2011.

1. Final non-expert disclosures shall be exchanged by: February 28, 2011.

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2. Depositions shall be completed by: April 29, 2011.
3. Discovery shall be completed by: April 29, 2011.
4. The date by which all dispositive or partially dispositive motions shall be filed:
May 20, 2011.

10:09 a.m. Matter concludes.